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APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1637

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner,

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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INDEX.

PAGE

Rulings and Opinions:

Opinion of the Attorney General of the State of Illinois, dated January 22, 1971 ..... A47

Opinion of the Attorney General of the State of Illinois, dated March 2, 1973 ..... A49

Opinion of the State's Attorney of Cook County, Illinois, dated December 28, 1970 ..... A51

Journal of the Illinois Senate, No. 53, April 29, 1969, at pages 1038 and 1039, showing submission of Senate Joint Resolution No. 30 ..... A18

Journal of the Illinois Senate, No. 64, May 15, 1969, at pages 1407-1408 showing the adoption of an Amendment to Senate Joint Resolution No. 30, and the adoption of Senate Joint Resolution No. 30, as amended A18-19

Senate Joint Resolution No. 30, as amended A20

Journal of the Illinois House of Representatives, No. 85, June 30, 1969 at page 5076, showing House concurrence in the adoption of Senate Joint Resolution No. 30, as amended A20-21

Journal of the Illinois Senate, No. 103, June 30, 1969, at page 3459, showing the adoption of Senate Joint Resolution No. 43 ..... A22

Journal of the Illinois House of Representatives, No. 85, June 30, 1969, at pages 5171 and 5172, re House concurrence in Senate Joint Resolution No. 43 .... A23

Journal of the Illinois House of Representatives. No. 89, October 23, 1969, pages 5426-5429 indicating the submission of the initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" A23

Journal of the Illinois Senate, No. 103, June 30, 1969, pages 3535-3537, showing the submission and approval of the initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" A28

Journal of the Illinois House of Representatives, No. 102, May 6, 1970, pages 6313-6316, showing the submission and adoption of a corrected "Report of Special Joint Committee on Submission of Proposed Constitutional Amendment" A28

Journal of the Illinois Senate, No. 123, May 7, 1970, pages 4202-4205, Showing Senate concurrence in the corrected "Report of Special Joint Committee on Submission of Proposed Constitutional Amended" A33

Composite Report of Initial and Corrected "Report of Special Joint Committees on Submission of Proposed Constitutional Amendments" showing deleted matter crossed out and new matter underlined A34

Official Blue Pamphlet mailed to the Illinois electorate by the Illinois Secretary of State A39

Journal of the Illinois Senate, No. 131, May 19, 1970, page 4405, showing adoption of Senate Joint Resolution No. 67 ..... A44

Journal of the Illinois House of Representatives, No. 115, May 29, 1970, page 7145, showing House concurrence in the adoption of Senate Joint Resolution No. 67 ..... A45

Affidavits of Members of the Illinois General Assembly Which Proposed Article IX-A:

Representative Bernad McDevitt A53

Senator Terrel E. Clarke A55

Senator W. Russell Arrington A57

Senator Thomas A. McGloon A58

Senator William C. Harris A59

Stipulation:

Stipulation entered into by and between the parties by their respective counsel, filed in the trial court A60

Order:

Final Order entered on December 3, 1976, by the trial judge, the Honorable F. Emmett Morrissey A61

DECISION OF THE ILLINOIS SUPREME COURT, CONSTITUTIONAL STATUTORY AND LEGISLATIVE ACTION INVOLVED.

Opinion of the Illinois Supreme Court, which is the subject of this Appeal, as reported in the Illinois Supreme and Appellate Courts Combined Advance Sheets—February 22, 1978—No. 4 (69 Ill. 2d 374), reads as follows:

(Nos. 49266-67 cons.—Judgments affirmed.)

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO *et al.*, Appellants, v. STANLEY T. KUSPER County Clerk, *et al.*, Appellees, R. B. ROBINSON, Appellant, v. STANLEY T. KUSPER, County Clerk, *et al.*, Appellees.

Opinion filed Nov. 30, 1977.—Rehearing denied Jan. 26, 1978.

1. TAXES—*the 1970 Constitution mandates the legislative abolition of all ad valorem personal property taxes by January 1, 1979.* Section 5(c) of article IX of the 1970 Constitution is a mandate to the General Assembly to abolish all *ad valorem* taxes on personal property on or before January 1, 1979, and legislation is contemplated and necessary to carry such abolition into effect. (P. 383.)

2. TAXES—*the 1970 Constitution does not require the legislature to abolish all ad valorem personal proper taxes simultaneously.* The mandate of the 1970 Constitution that the General Assembly must abolish all *ad valorem* personal property taxes by January 1, 1979 (Ill. Const. 1970, art. IX, sec. 5(c)), does not require that all such taxes be abolished at the same time. (P. 383.)

3. TAXES—*the legislature is required to replace abolished ad valorem personal property taxes with other taxes that fall upon the same classes of taxpayers.* When abolishing *ad valorem* personal property taxes as required by section 5(c) of article IX of the 1970 Constitution, the General Assembly must concurrently replace all revenue lost by units of local government and school districts by imposing statewide taxes solely on these classes relieved of the burden of the taxes abolished, and this constitutional requirement is not self-executing, but requires legislation to carry it into effect. (Pp. 383-84.)

4. TAXES—*the constitutional requirement that the abolition of an ad valorem personal property tax must be accompanied by a replacement tax is not limited to taxes on business entities.* The 1970 Constitution requires the legislature to abolish all *ad valorem* personal property taxes by January 1, 1979, and provides that the resulting revenue losses of units of local government and school districts must be replaced by other statewide taxes imposed solely on those classes relieved of the burden of the taxes abolished (Ill. Const. 1970, art. IX, sec. 5(c)), and these replacement-tax provisions are not intended to apply only to taxes on business entities, since section 5(c) contains no such restrictive language and there is no justification for so construing it. (P. 385.)

5. TAXES—*lack of statewide uniformity in the assessment of ad valorem taxes on personal property held in trust for natural persons does not negate the constitutional requirement that when such taxes are abolished, replacement taxes must be enacted.* Section 5(c) of article IX of the 1970 Constitution requires the enactment of concurrent replacement taxes when *ad valorem* personal property taxes are abolished, and the fact that *ad valorem* taxes on personal property held in trust for a natural person are being assessed only in seven counties of this State and not assessed in 95 others does not alter or limit the General Assembly's obligation to enact a replacement tax affecting all trusts on a statewide basis once it has enacted a statute exempting from

ad valorem personal property taxes "[a]ll personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person" (Ill. Rev. Stat. 1975, ch. 120, pars. 500, 500.21b). (P. 385.)

6. TAXES—*the statute exempting from personal property taxation property held by a trustee for the benefit of a natural person is unconstitutional due to the legislature's failure to enact a replacement tax.* Section 5(c) of article IX of the 1970 Constitution requires the General Assembly to abolish all *ad valorem* personal property taxes on or before January 1, 1979, and requires the legislature to concurrently replace the resulting revenue losses of local governments and school districts with other statewide taxes imposed solely on those classes relieved of the burden of the taxes abolished, and Public Act 78-1250 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b), exempting from *ad valorem* taxation all personal property held by a trustee for the exclusive benefit of a natural person is unconstitutional due to the fact that the General Assembly failed to enact a proper concurrent replacement tax. (P. 386.)

7. TAXES—*an ad valorem tax on personal property held in a testamentary or inter vivos trust for a natural person is not a tax abolished under the 1870 Constitution.* The 1970 amendment to the 1870 Constitution providing that "taxation of personal property by valuation is prohibited as to individuals" (Ill. Const. 1870, art. IX-A) does not apply to property held in an *inter vivos* or testamentary trust for the benefit of a natural person, and consequently it cannot be said that the 1970 Constitution's prohibition against reinstatement of any *ad valorem* personal property tax abolished on or before the effective date of that constitution prohibits the assessment of *ad valorem* taxes against property held in such a trust. *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, followed. (Pp. 386-90.)

8. TAXES—*a ruling by the Director of the Department of Local Government Affairs that is inconsistent with law is not*

binding on local taxing officials. Section 130(3) of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 611(3)) provides that the Department of Local Government Affairs shall "prescribe general rules and regulations, not inconsistent with law, * * * which * * * shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction," and a ruling issued by the director of that department that is inconsistent with the law is not binding upon local taxing officials. (P. 391.)

Appeal from the Circuit Court of Cook County, the Hon. F. Emmett Morrissey, Judge, presiding.

Concannon, Dillon, Snook & Morton, of Chicago (William R. Dillon and John B. Dillon, of counsel) and O'Keefe, Ashenden & Lyons (Thomas G. Lyons, of counsel), for appellants.

Bernard Carey, State's Attorney, of Chicago (Paul P. Beibel, Jr., Deputy State's Attorney, and Lawrence Halperin, Assistant State's Attorney, of counsel), for appellees.

Sidley & Austin, of Chicago (William H. Avery and J. Robert Barr, of counsel), for *amicus curiae* League of Women Voters of Illinois.

William J. Scott, Attorney General, of Springfield (Imelda R. Terrazino, of Chicago, of counsel), *amicus curiae.*

Pope & Driemeyer, of Belleville (Joseph R. Lowery, of counsel), for *amicus curiae* Southern Illinois Corporate Fiduciaries Association.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

The plaintiffs in these consolidated causes filed class actions in the circuit court of Cook County seeking, *inter alia,* a declaratory judgment that Public Act 78–1250 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b) is a valid legislative enactment exempting from personal property taxation for 1975 and subsequent years all personal property held by a trustee for the exclusive benefit of a natural person. The trial court dismissed certain counts of each complaint on the grounds that Public Act 78–1250 was unconstitutional because of the failure of the General Assembly to enact a concurrent replacement tax as required by section 5(c) of article IX of the 1970 Constitution of the State of Illinois and that this court's decision in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, was *res judicata* as to other relief sought. Plaintiffs have appealed directly to this court pursuant to Supreme Court Rule 302(a)(1). 58 Ill. 2d R. 302(a)(1).

Public Act 78–1250, which became effective September 10, 1974, added section 19.21b to the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b). The statute, as so amended, provides in pertinent part:

> "Sec. 19. All property described in Sections 19.1 through 19.24 to the extent therein limited, is exempt from taxation. * * *
>
> * * * * *
>
> Sec. 19.21b. All personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person."

The principal issue is whether the failure of the General Assembly to concurrently enact a replacement tax renders this exemption unconstitutional as violative of section 5(c) of article IX of the 1970 Illinois Constitution, which provides:

> "On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal

property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article."

The complaint in cause No. 49266 was filed by seven banks and trust companies against certain taxing officials in Cook County who were responsible for the assessment and collection of personal property taxes in that county. The action was designated as a class action brought by plaintiffs on behalf of themselves and other trustees of "traditional forms of trusts" created by wills and other written instruments for the purpose of holding, conserving and managing trust assets for the benefit of natural persons and also as representatives of the beneficiaries of said trusts. Count I of plaintiffs' second amended complaint included allegations that when the General Assembly enacted Public Act 78–1250, its members were of the opinion that it was not necessary to concurrently enact a replacement tax for the reason that there had been no loss of revenue to school districts and units of local governnment in 95 counties which had never assessed trusts for the benefit of natural persons; that the fiduciary class on which a replacement tax would fall could not be delineated, since many trusts for natural persons held assets exempt from personal property taxation under section 21(4) of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 502(4)), which exempts from personal property taxation the shares of capital stock of corporations whose tangible personal property or capital stock is assessed in Illinois; that because of changes in investments, trusts frequently shift from a taxable to a nontaxable status; and that the heaviest burden of a replacement tax would fall on trusts which had not previously been taxed by reason of the exemption contained in section 21(4) of the Revenue Act. Count I further alleged that the exemption contained in section 21(4) of the Revenue Act was

preserved by section 5(b) of article IX of the 1970 Illinois Constitution, which provides that "[a]ny ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated"; and that if the General Assembly had enacted a replacement tax on trusts for the benefit of natural persons, such replacement tax would have constituted the reimposition of a tax abolished prior to the adoption of the 1970 Constitution contrary to the express provisions of section 5(b) of article IX thereof. It was further alleged that by letter dated October 14, 1975, the Director of the Department of Local Government Affairs had ruled that personal property held in trust for the benefit of natural persons was not to be assessed for 1975 and that such ruling was binding on Cook County taxing officials by reason of section 130(3) of the Revenue Act (Ill. Rev. Stat. 1975, ch. 120, par. 611(3)), which provides in pertinent part that the Department of Local Government Affairs shall "prescribe general rules and regulations, not inconsistent with law, * * * which * * * shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction"; and that contrary to such ruling the defendants had assessed and had attempted to collect *ad valorem* taxes on personal property held by plaintiffs on April 1, 1975, as trustees for the exclusive benefit of natural persons. Plaintiffs prayed that section 19.21b of the Revenue Act be held to exempt from *ad valorem* taxation personal property held by a trustee for the exclusive benefit of a natural person and that the ruling of the Director of the Department of Local Government Affairs not to assess personal property held in trust for the benefit of natural persons be held to be binding on the defendant county taxing officials.

Count II similarly alleged that certain trusts held only shares of stock of companies whose tangible personal property or capital stock had been assessed under the Revenue Act and were therefore exempt from personal property taxation under section

21(4) of that act; that Public Act 78–1250 was valid and constitutional without the concurrent enactment of a replacement tax; that if a replacement tax were enacted with respect to such trusts whose only assets were tax exempt under section 21(4) of the Revenue Act, it would constitute the reimposition, under the guise of a replacement tax, of a tax abolished prior to the adoption of the 1970 Constitution in violation of section 5(b) of article IX thereof. Plaintiffs prayed in count II that section 19.21(b) of the Revenue Act be held constitutional.

Count III sought a declaration that nine specific testamentary and *inter vivos* trusts were exempt from personal property taxation under the authority of this court's decision in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, due to the fact that the trust imposed involuntary fiduciary relationships under which the beneficiaries were prevented from exercising property rights generally available to other natural persons or under which the beneficiaries, by reason of age or mental or physical incapacity or disability, were unable to exercise such property rights.

Cause No. 49267 is a class action for declaratory judgment brought against the same Cook County taxing officials by plaintiff, R. B. Robinson, on her own behalf and on behalf of the settlors of all irrevocable and revocable trusts created for the benefit of natural persons and on behalf of the beneficiaries of such trusts. Count II of plaintiff's second amended complaint, which is the only count with which we are concerned on this appeal, alleged that plaintiff was the settlor of an irrevocable trust for her son and daughter; that she was a registered voter and had voted at the general election held November 3, 1970, in favor of the proposition to add article IX-A to the 1870 Illinois Constitution, which provided: "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*"; that prior to voting on said proposition, she had read in full the pamphlet mailed to the electorate pursuant to law and was led to believe that the proposition would exempt from taxation all personal

property held in a fiduciary capacity for the benefit of natural persons; that she further believed in subsequently voting favorably on the 1970 Illinois Constitution that section 5(b) of article IX thereof would prohibit the reinstatement of such previously abolished *ad valorem* tax on personal property held in trust for the benefit of natural persons; that in reliance thereon and in the belief that property held in trust for the benefit of natural persons was exempt from personal property taxation, she created an irrevocable trust with herself as settlor for the benefit of her son and daughter on December 23, 1970; that Public Act 78–1250 adding section 19.21b to the Revenue Act exempted from personal property taxation for 1975 and subsequent years all personal property held by a trustee for the exclusive benefit of a natural person; that notwithstanding the foregoing and notwithstanding the ruling of the Director of the Department of Local Government Affairs dated October 14, 1975, not to assess trusts for the benefit of natural persons, the defendant taxing officials had continued to assess and collect taxes on the personal property held in said irrevocable trust for the benefit of her son and daughter for 1975 and prior years; and that unless article IX–A of the 1870 Illinois Constitution was construed to exempt personal property held in trust for natural persons from *ad valorem* taxation, her right to vote and that of other members of the class she represented would have been unconstitutionally abridged. Various affidavits of members of the General Assembly as to their intent in proposing the addition of article IX–A to the 1870 Constitution were attached to the complaint. Plaintiff prayed that article IX–A of the 1870 Constitution be construed to exempt personal property owned by or held in a fiduciary capacity for the benefit of natural persons from *ad valorem* taxation and that section 19.21b of the Revenue Act be held to exempt from taxation all personal property held by a trustee for the exclusive benefit of a natural person.

The two causes were consolidated for hearing in the trial court. In each cause the defendants filed motions to dismiss the

complaints for failure to state a cause of action. In No. 49266, the trial court granted the motion to dismiss count I of plaintiffs' second amended complaint on the ground that Public Act 78–1250 was unconstitutional for failure of the General Assembly to concurrently enact a replacement tax as required by section 5(c) of article IX of the 1970 Constitution and on the further ground that the memorandum of the Director of the Department of Local Government Affairs dated October 14, 1975, was null and void and not binding on defendants. The motion to dismiss was sustained as to counts II and III on the grounds that the decision of this court in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, was *res judicata*. In No. 49267, the trial court apparently granted some form of relief as to count I, the circumstances of which are not entirely clear. No appeal was taken therefrom, and count I is not involved here. The motion to dismiss count II of plaintiffs' second amended complaint was sustained on all three of the foregoing grounds.

We turn first to the questions raised concerning the constitutionality of Public Act 78–1250. In our opinion, *Elk Grove Engineering Co.* v. *Korzen* (1973), 55 Ill. 2d 393, is directly in point and is controlling. In that case, the General Assembly passed a law exempting from *ad valorem* taxation all tangible personal property used by the owner exclusively in cultivating, operating or managing a farm or in the business of farming. No concurrent replacement tax was enacted. Upon examination of the provisions of section 5(c) of article IX of the 1970 Constitution and the relevant debates and proceedings of the 1970 constitutional convention relative thereto, we concluded that the provisions of section 5(c) constitute a mandate to the General Assembly to abolish all *ad valorem* taxes on personal property on or before January 1, 1979; that legislation is contemplated and necessary to carry such abolition into effect; that while the Constitution does not require that all such taxes be abolished at the same time, the General Assembly is nevertheless under a continuing duty to effect such abolition by the specified date;

that when abolishing *ad valorem* personal property taxes, the General Assembly must concurrently replace all revenue lost by units of local government and school districts by imposing statewide taxes solely on those classes relieved of the burden of the taxes abolished; and that this latter provision is not self-executing but requires legislation to carry it into effect. We accordingly held that the statute there in question purporting to exempt personal property used in farming from personal property taxation was unconstitutional, since the General Assembly had not imposed a replacement tax as required by section 5(c).

Plaintiffs attempt to distinguish *Elk Grove* on the grounds that in that case the General Assembly was dealing with a class of taxpayers engaged in the "business" of farming where each member of the class owned tangible personal property; where all 102 counties of the State uniformly assessed and collected personal property taxes from those engaged in such business; and where the abolition of such taxes represented an actual loss of revenue to units of local government and school districts in all 102 counties of the State. They urge that the case at bar differs from *Elk Grove* in that Public Act 78–1250 deals with non-business taxpayers, some of which are not subject to personal property taxes by reason of the exemptions contained in section 21(4) of the Revenue Act; in that only 7 of the 102 counties in the State assess and collect *ad valorem* taxes on personal property held in trust; and because the abolition of such taxes therefore does not cause any lost revenue in 95 counties. They urge that a statewide replacement tax could not be imposed on all trusts, because to do so as to trusts holding previously exempt property would constitute the reinstatement of a previously abolished tax in violation of section 5(b) of article IX of the 1970 Constitution. They also suggest, as alleged in the complaint, that by reason of the exemptions contained in section 21(4) of the Revenue Act and the fact that trusts are not currently being taxed in 95 counties, any replacement tax imposed on trusts would necessarily cast the heaviest burden on trusts

not previously taxed and that for these and other reasons the General Assembly was unable to determine how to enact a replacement tax and indeed thought it unnecessary to do so. They argue that as a consequence of the foregoing factors, the provisions of section 5(c) as applied to traditional trusts are vague, indefinite and uncertain and therefore violative of the due process and equal protection clauses of the Federal and State constitutions.

We find these arguments to be without merit. At the outset, we cannot concur with the suggestion that the replacement tax provisions of section 5(c) were intended to apply only to business entities. The provision contains no such restrictive language, and we find no justification for so construing it. Furthermore, the fact that *ad valorem* taxes on personal property held by trusts are being assessed in only seven counties of the State does not, in our opinion, alter or limit the General Assembly's obligation to enact a replacement tax affecting all trusts on a statewide basis. The fact is that nonexempt personal property held by trustees is subject to *ad valorem* taxation in all counties of the State. All trusts are to that extent subject to the burden of such taxes, and the school districts and units of local government in those counties will lose potential revenues to the extent those taxes are abolished. Upon abolition of such taxes, we can see no constitutional prohibition against imposing a replacement tax on all trusts thus relieved of the burden, including those which were previously subject to the tax but which were not taxed due to the failure of local taxing officials to assess nonexempt property held by trustees. Also, the fact that some trusts hold property previously exempt from *ad valorem* personal property taxation and the fact that trust assets change from time to time does not, in our view, render the imposition of a statewide replacement tax totally impossible as suggested by the plaintiffs. It is neither necessary nor appropriate in this case to decide the question of the extent to which a replacement tax may be imposed on trusts which hold assets which were previously exempt from personal

property taxation. For this reason, we cannot agree with the argument that any replacement tax must necessarily fall heaviest on those trusts previously exempt from tax. We must furthermore disagree with the contention that the provisions of section 5(c) as applied to traditional trusts are unconstitutionally vague, indefinite and uncertain. In our opinion, the *Elk Grove* decision is determinative, and we accordingly find that the trial court in both cases correctly held Public Act 78–1250 to be unconstitutional for failure of the General Assembly to concurrently enact a replacement tax as required by section 5(c) of article 1X of the 1970 Constitution.

The other allegations of the complaints filed by the plaintiffs in each of these causes involve article 1X–A of the 1870 Constitution, which was approved by the voters on November 3, 1970, and which provides: "Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*." The scope of that provision is still pertinent under the 1970 Constitution by virtue of section 5(b) of article IX, which prohibits the reinstatement of any *ad valorem* personal property tax abolished on or before the effective date of the 1970 Constitution and section 5(c) of that article, which, as previously discussed, requires the imposition of a replacement tax for personal property tax abolished after January 2, 1971.

The appeals now before us mark the third occasion on which we have been asked to construe article IX–A of the 1870 Constitution as applied to fiduciaries. In *Lake Shore Auto Parts Co.* v. *Korzen* (1971), 49 Ill. 2d 137, we concluded that, by use of the phrase "as to individuals," the General Assembly intended to abolish the *ad valorem* taxation of personal property owned by a natural person, or two or more natural persons as joint tenants or tenants in common. We further held that the article, as so interpreted, violated the equal protection clause of the fourteenth amendment of the Federal Constitution. The Supreme Court of the United States granted *certiorari* and reversed and remanded,

holding that there was no constitutional infirmity in the article. (410 U. S. 356, 35 L. Ed. 2d 351, 93 S. Ct. 1001.) On remand, we considered memoranda filed by the parties and by the Corporate Fiduciaries Association of Illinois urging particular interpretations of article IX–A. In response thereto, this court stated:

> "The personal property thus left subject to taxation under article IX–A includes the following categories of ownership: partnerships, limited partnerships, joint ventures, professional associations, and professional service corporations. Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by article IX–A." 54 Ill. 2d 237, 239.

Mr. Justice Goldenhersh dissented from that portion of the opinion relating to trustees and other fiduciaries. In *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, this court was asked to reconsider our prior decisions in the *Lake Shore* cases. We note that six of the seven plaintiffs in cause No. 49266 now before us were also plaintiffs in *Hanley* and were also designated as members of the Corporate Fiduciaries Association of Illinois in the *amicus curiae* brief filed in the *Lake Shore* case. In *Hanley*, the plaintiffs urged that article IX–A should be interpreted to exempt from taxation personal property held by trustees and other fiduciaries for the benefit of natural persons. After extensive review of various interpretive materials, including the legislative history as reflected by Senate and House journals, the pamphlet provided to voters describing the proposed article with arguments for and against it, and the "Explanation of Amendment" which was printed on the ballot, we reached the following conclusions:

> "For the reasons stated, we have again rejected the claim that all personal property held in trust for natural persons is exempt from taxation. Nevertheless, the arguments of the plaintiffs and our review of the interpretive materials and the underlying policy considerations have persuaded us that there are some situations in which property held by fiduciaries can fairly be said to have been intended to be

exempted from taxation. Such situations are those in which the natural person who owns the property is prevented by law from dealing with it as a natural person.

When, for example, the ownership of a natural person is terminated by death, the law imposes an involuntary fiduciary relationship during the period of administration. Similarly, the legal inability of an incompetent to manage and dispose of his property requires the appointment of a conservator. A minor's legal disability presents a closer case, for property may be held by a minor in his own name. Nevertheless, the inability of a minor to deal fully and freely with property held in his own name often compels the establishment of a guardianship or custodianship for the minor's property. [Citation.] In each of these situations the fiduciary relationship comes into being because the law prevents a particular class of natural persons (heirs or legatees of decedents, incompetents or minors) from exercising property rights that are available generally to other natural persons. These situations, in our opinion, are distinguishable from voluntary fiduciary relationships created to accomplish results that could not be achieved so long as the property is owned by a natural person. To the extent thus indicated, our decision in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237 (1973), is overruled." 61 Ill. 2d 452, 463.

Although their approach is somewhat different, the plaintiffs in these consolidated appeals are again asking for a reconsideration of the conclusions reached in the *Lake Shore* and *Hanley* cases with respect to the taxability of personal property held by a fiduciary. In No. 49266, the plaintiffs seek a declaratory judgment that nine specific trusts are exempt from personal property taxation under article IX–A of the 1870 Constitution. We consider it unnecessary to describe each of the trusts in detail. It suffices to note that they were either testamentary trusts or *inter vivos* revocable or irrevocable trusts created by a settlor for the benefit of himself and others. Plaintiffs point out that in *Hanley*, it was indicated that personal property held in a decedent's estate during the period of administration would not be subject

to personal property taxation, since the decedent's ownership of such property had been terminated by death and the law imposed an involuntary fiduciary relationship during the period of administration. They argue that under the rationale of the *Hanley* decision, all testamentary trusts should also be exempt from personal property taxation since they come into existence by the involuntary act of the death of the testator, and the beneficiaries of such trusts are as much prevented by law from dealing with the assets of the trust as a natural person during the period of the administration of the trusts as they are during the period of administration of the decedent's estate. Likewise, they argue that trusts in which a minor or incompetent becomes a beneficiary after creation of the trust should also be considered exempt in view of the legal inability on the part of the beneficiary to deal with the property as a natural person. We find no merit in these and the other related arguments advanced by plaintiffs in this regard. While a decedent has little or no choice with respect to the creation of a fiduciary relationship during the period of administration of his estate with respect to property owned by him at his death, a testator most definitely can determine whether such assets are thereafter to be left outright to the objects of his bounty or to be held in trust for such beneficiaries. It is apparent that each of the trusts set forth in the complaint are voluntary fiduciary relationships created by a settlor or testator to accomplish results that could not be achieved if the property was owned by a natural person. None of the trusts involved situations where property held in the name of a natural person was subjected to an involuntary fiduciary relationship on account of that person's minority, incompetency or death which rendered him unable to deal with his property as a natural person. The *Hanley* decision is dispositive of the issues raised in count III of plaintiffs' complaint in No. 49266, and we conclude that the trial court correctly allowed the defendant's motion to dismiss that count.

Count II of plaintiff's amended complaint in No. 49267 involves essentially the same questions previously raised in

Hanley with regard to the intent of the General Assembly when it proposed article IX–A and the content of the informational pamphlet concerning the proposed amendment which was mailed to the electorate prior to the referendum thereon. It is unnecessary to reexamine these matters here. We did not then and we do not now agree with plaintiff's argument that the information given to voters prior to the referendum on article IX–A was false and misleading, and we likewise find no merit in the allegations that her right to vote would be unconstitutionally abridged unless article IX–A is construed in the manner she proposes. We accordingly hold that the trial court did not err in granting defendants' motion to dismiss count II of plaintiff's second amended complaint in cause No. 49267.

The final issue raised by the pleadings in each case concerns the validity of the memorandum of October 14, 1975, issued by the Director of the Department of Local Government Affairs advising county taxing officials throughout the State "that personal property held by any fiduciary for the benefit of a natural person, including personal property held under a voluntary fiduciary arrangement, not be assessed for 1975." For the reasons stated earlier in this opinion, we conclude that the advice contained in that memorandum is inconsistent with law and not binding on local taxing officials. The trial court correctly so held.

Accordingly, the judgments of the circuit court of Cook County are affirmed.

Judgments affirmed.

Journal of the Illinois Senate, No. 53, April 29, 1969, at pages 1038 and 1039 showing the submission of Senate Joint Resolution No. 30, as follows:

Senator Arrington moved that the Rules be suspended for the purpose of introducing a Constitutional Amendment.

The motion prevailed.

Senators Arrington, Coulson, Harris, Groen, Davidson and Collins offered the following Senate Joint Resolution:

SENATE JOINT RESOLUTION No. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971.

Senator Arrington moved that the foregoing resolution be referred to the Secretary's desk.

The motion prevailed.

Journal of the Illinois Senate, No. 64, May 15, 1969, at pages 1407-1408 showing the adoption of an amendment to Senate Joint Resolution No. 30 and the adoption of Senate Joint Resolution No. 30, as amended:

CONSIDERATION OF SENATE JOINT RESOLUTION ON SECRETARY'S DESK

Senator Arrington moved that Senate Joint Resolution No. 30 on the Secretary's Desk be taken up for immediate consideration.

Senators McGloon and Arrington offered the following amendment:

AMENDMENT No. 1

Amend Senate Joint Resolution No. 30 on line 15 by striking the period and adding the following: *"as to individuals."*

Senator McGloon moved the adoption of the foregoing amendment.

The motion prevailed and the amendment was adopted.

Senator Arrington moved that the foregoing Senate Joint Resolution as amended be adopted.

And on that motion a call of the roll was had resulting as follows: Yeas, 46; nays, 3.

The following voted in the affirmative:

Arrington	Graham	Mitchell
Baltz	Groen	Mitchler
Bennett	Harris	Mohr
Berning	Hoffelder	Newhouse
Bidwill	Horsley	Nihill
Carpentier	Knuepfer	Peters
Carroll	Kusibab	Romano
Chew	Lanigan	Rosander
Collins	Larson	Saperstein
Coulson	Latherow	Schoeninger
Davidson	Laughlin	Smith
Donnewald	Lyons	Sokolnicki
Dougherty	McBroom	Soper
Duda	McCarthy	Swanson
Fawell	McGloon	
Gilbert	Merritt	

Yeas—46.

The following voted in the negative:

Clarke	Dixon	Ottwein

Nays—3.

The resolution having received the votes of two-thirds of the members elected, was declared adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Senator Arrington moved to reconsider the vote by which Senate Joint Resolution No. 30 was adopted.

Senator Swanson moved that Senator Arrington's motion lie on the table.

The motion to table prevailed.

As so amended and adopted by the Illinois Senate on May 15, 1969 Senate Joint Resolution No. 30 read as follows:

"Senate Joint Resolution No. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX–A to the Constitution, the added Article to read as follows:

ARTICLE IX–A

Section 1. Notwithstanding any other provisions of this Constitution, the taxation of personal property by valuation is prohibited as to individuals.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

Journal of the Illinois House of Representatives, No. 85, June 30, 1969 at page 5076, showing House concurrence in the adoption of Senate Joint Resolution No. 30, as amended, as follows:

SENATE JOINT RESOLUTION CONSTITUTIONAL AMENDMENTS THIRD READING

Senate Joint Resolution No. 30. Was taken up and read at large a third time.

Pending discussion, Mr. Downes moved the previous question.

And the question being, "Shall the main question be now put?" it was decided in the affirmative.

And the question then being on the concurrence in the adoption of Senate Joint Resolution No. 30, it was decided in the affirmative by the following vote: Yeas, 171; nays, none; answering present, 2.

Those voting in the affirmative are:

Alsup
Anderson, M. K.
Anderson, R. E.
Arrigo
Barr
Barry, Don
Barry, Tobias
Berman
Blades
Blair
Bluthardt
Borchers
Brandt
Brinkmeier
Burditt
Burgoon
Caldwell
Calvo
Campbell
Capuzi
Carrigan
Carter
Chapman
Choate
Clabaugh
Collins, O. G.
Collins, P. W.
Conolly, John
Copeland
Corbett
Course
Cox
Craig
Cunningham, L.
Cunningham, W.
Davis
Dawson
Day
DiPrima
Downes
Dyer
Elrod
Epton
Ewell
Fary
Fennessey
Friedland
Gardner
Garmisa
Geisler
Giorgi
Graham
Granata
Hall, Harber
Hall, Kenneth
Hanahan
Harpstrite
Hart
Henss
Hill
Hoffman, G. L.
Hoffman, R. K.
Holloway
Homeier
Houde
Houlihan
Hunsicker
Hyde
Jacobs
Janczak
Johnson
Johnston
Jones, J. D.
Jones, L. N.
Juckett
Kahoun
Karmazyn
Katz
Keller
Kennedy
Kipay
Kirie
Kleine, J. H.
Klosak
Krause
Lauterbach
Lechowicz
Lehman
Lenard
Lindberg
Londrigan
Madigan
Mann
Maragos
Markert
Matijevich
McAvoy
McClain
McCormick
McDermott
McDevitt
McGah
McLendon
McPartlin
Merlo
Meyer
Miller, K. W.
Miller, P. J.
Moore
Morgan
Murphy
Neff
North
Nowlan
O'Hallaren
Palmer
Pappas
Peterson
Philip
Pierce
Randolph
Rayson
Redmond
Regner
Ropa
Rose
Sandquist
Savickas
Scariano
Schisler
Schlickman
Schoeberlein
Sevcik
Shade
Shapiro
Shaw
Shea
Simmons
Sims
Smith, F. J.
Soderstrom
Springer
Stedelin
Stolle
Stone
Taylor
Telcser
Thompson, J. W.
Thompson, R. L.
Tipsword
Touhy
Tuerk
Vadalabene

Waddell	Washington, G.	Wolfe, B. B.
Walker	Washington, H.	Wright
Wall	Weaver	Yourell
Walsh, R. A.	Williams	Mr. Speaker
Walsh, Wm. D.	Wolbank	Yeas—171.
Warman	Wolf, F. C.	
Washburn	Wolf, J. J.	Nays—0.

Answering present:

Bradley	Elward	Answering present—2.

And the House concurred with the Senate in the adoption of the resolution, by a two-thirds vote.

Ordered that the Clerk inform the Senate thereof.

Journal of the Illinois Senate, No. 103, June 30, 1969 showing the offering and adoption of Senate Joint Resolution No. 43 at page 3459.

"Senator Arrington offered the following Senate Joint Resolution and, having asked and obtained unanimous consent to suspend the rules for its immediate consideration, moved its adoption:

SENATE JOINT RESOLUTION NO. 43

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that a special committee on constitutional amendments, to consist of 5 members of the Senate appointed by the President pro tempore and 5 members of the House of Representatives appointed by the Speaker, be appointed to prepare a brief explanation of the constitutional amendment which is to be submitted to the electors at the next election for members of the General Assembly and a brief argument in favor of such amendment, and the form in which the amendment shall appear on the separate ballot, in conformity with "An Act to provide the manner of proposing amendments to the constitution, and submitting the same to the electors of this State," approved March 14, 1877, as amended, which Committee shall report to the present General Assembly not later than June 30, 1969; and be it further

Resolved, That a special committee on constitutional amendments, to consist of 5 members of the Senate appointed by the President pro tempore and 5 members of the House of Representatives appointed by the Speaker, be appointed to prepare a brief argument against such amendment, which Committee shall report to the present General Assembly not later than June 30, 1969.

The motion prevailed and the resolution was adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein."

Senate Joint Resolution No. 43 was approved by the Illinois House of Representatives on June 30, 1969 (Journal of the House of Representatives, No. 85, June 30, 1969, at pages 5171 and 5172).

Journal of the Illinois House of Representatives, No. 89, October 23, 1969 at pages 5426 to 5429 indicating the submission of the initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment", said initial Report reading as follows:

"REPORTS"

"The special joint committee appointed pursuant to Senate Joint Resolution No. 43 submitted the following:

REPORT OF SPECIAL JOINT COMMITTEES ON SUBMISSION OF THE PROPOSED CONSTITUTION AMENDMENT

To the Honorable, the Members of the Senate and House of Representatives of the Seventy-Sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present

an explanation of the proposed amendment, give the argument in favor if it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly, and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted.

Committee of the Senate (Members preparing arguments in favor)	*Committee of the House (Members preparing arguments in favor*
TOM MERRITT	EDWARD J. COPELAND
EVERETT E. LAUGHLIN	LESLIE N. JONES
JAMES H. DONNEWALD	R. F. TIPSWORD
ROBERT W. McCARTHY	
Committe of the Senate (Members preparing arguments against)	*Committee of the House (Members preparing arguments against)*
TERREL E. CLARKE	T. J. HANAHAN, JR.
DANIEL DOUGHERTY	BERNARD McDEVITT
CECIL A. PARTEE	ANTHONY SCARIANO

EXPLANATION OF AMENDMENT

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX–A, thus setting aside existing provisions in Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

FORM OF BALLOT FOR AMENDMENT

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition of Article IX–A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals in Chicago for example, comprising about a third of the population of the State, pay no personal property taxes, while individuals in suburban Cook County and in other counties of Illinois pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources (often at rates which are confiscatory of the earnings they are able to achieve), and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all

of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Arguments Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user make payments on it? Business interests generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of State manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation or trust.

—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now

falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

The initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" had previously been submitted to and adopted by the Illinois Senate on June 30, 1969. (Journal of the Illinois Senate, No. 103, June 30, 1969 at pages 3535-3537).

Journal of the Illinois House of Representatives, No. 102, May 6, 1970, at pages 6313-6316, showing the submission and adoption of a corrected "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment", said Corrected Report reading as follows:

"REPORTS"

Mr. McDevitt, from the Special Joint Committee appointed pursuant to Senate Joint Resolution No. 43, submitted the following corrected report in lieu of a report printed in House Journal No. 89 on October 23, 1969:

REPORT OF SPECIAL JOINT COMMITTEES
ON SUBMISSION OF PROPOSED
CONSTITUTIONAL AMENDMENT

To the Honorable, the Members of the Senate and House of Representatives of the Seventy-sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present an explanation of the proposed amendment, give the argument in favor of it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted,

Committee of the Senate (Member preparing arguments in favor)	*Committee of the House* (Membes preparing arguments in favor)
TOM MERRITT	EDWARD J. COPELAND
EVERETT E. LAUGHLIN	LESLIE N. JONES
JAMES H. DONNEWALD	ROLLAND F. TIPSWORD
ROBERT W. MCCARTHY	

Committee of the Senate (Members preparing arguments against)	*Committee of the House* (Members preparing arguments against)
TERREL E. CLARKE	THOMAS J. HANAHAN
DANIEL DOUGHERTY	BERNARD MCDEVITT
CECIL A. PARTEE	ANTHONY SCARIANO

EXPLANATION OF AMENDMENT.

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX-A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

Form of Ballot for Amendment

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX-A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

Arguments in Favor of the Proposed Amendment

The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

—It is not evenly administered and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made,

for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should not be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

ARGUMENTS AGAINST THE PROPOSED AMENDMENT

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interest generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of state manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personality, such as shares of intangibles not owned by individuals, which can be shifted out of the state, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation.

—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected

to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve it to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

Mr. McDevitt moved that leave be granted to the Special Committee to submit the foregoing corrected report for adoption.

The motion prevailed.

Mr. McDevitt then moved that the House adopt the corrected report.

And the motion prevailed.

Ordered that the Clerk inform the Senate thereof and ask their concurrence therein.

The corrected "Report of Special Joint Committees on Submission of Prepared Constitutional Amendment" was approved by the Illinois Senate on May 7, 1970 (Journal of the Illinois Senate, No. 123, May 7, 1970, at pages 4202-4205):

COMPOSITE REPORT OF INITIAL AND CORRECTED REPORTS OF THE SPECIAL COMMITTEE ON CONSTITUTIONAL AMENDMENTS, SHOWING DELETED MATTER CROSSED OUT AND NEW MATTER UNDERLINED.

REPORT OF SPECIAL JOINT COMMITTEES ON SUBMISSION IF PROPOSED CONSTITUTION AMENDMENT

To the Honorable, the Members of the Senate House of Representatives of the Seventy-Sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present an explanation of the proposed amendment, give the argument in favor of it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly, and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted,

Committee of the Senate (Members preparing arguments in favor)
TOM MERRITT
EVERETT E. LAUGHLIN
JAMES H. DONNEWALD
ROBERT W. MCCARTHY

Committee of the House (Members preparing arguments in favor)
EDWARD J. COPELAND
LESLIE N. JONES
R. F. TIPSWORD

Committee of the Senate (Members preparing arguments against)
TERREL E. CLARKE
DANIEL DOUGHERTY
CECIL A. PARTEE

Committee of the House (Members preparing arguments against)
T. J. HANAHAN, JR.
BERNARD MCDEVITT
ANTHONY SCARIANO

EXPLANATION OF AMENDMENT

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX–A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

FORM OF BALLOT FOR AMENDMENT

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition to Article IX–A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals ~~*in Chicago for example,*~~ comprising about a third of the population of the State, pay no personal property taxes whatever, while ~~*individuals in suburban Cook County and in other*~~

~~counties of Illinois~~ the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources (often at rates which are confiscatory of the earnings they are able to achieve), and, in rural areas, on their livestock, grain, farm implements, etc.

The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to

Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Argument Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, ~~trusts~~, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with

merchants elsewhere and, in the case of industry, with out of State manufacturers.

It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation ~~*or trust*~~.

It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

OFFICIAL BLUE PAMPHLET MAILED TO THE ILLINOIS ELECTORATE BY THE ILLINOIS SECRETARY OF STATE:

AMENDMENT
to the
CONSTITUTION OF ILLINOIS

That Will Be Submitted to the Voters
November 3, 1970

This folder includes
Proposed Amendments to Constitution
Explanation of Proposed Amendment
Arguments in Favor of Proposed Amendment
Arguments Against Proposed Amendment
Form of Ballot

Published in compliance with Statute
by

PAUL POWELL
Secretary of State

To the Electors of the State of Illinois:

At the general election to be held on the 3rd day of November, 1970 a blue ballot will be given to you and you will be called upon in your sovereign capacity as citizens to adopt or reject the following proposed amendment to the Constitution of Illinois.

PROPOSED AMENDMENT TO ADD ARTICLE IX-A

(Prohibition of taxation of personal property by valuation as to individuals.)

Article IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*

Schedule

Paragraph 1. This amendment shall become effective January 1, 1971.

Explanation of Amendment
(See Form of Ballot)

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise

than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Arguments Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provisions for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of State manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation.

It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

Form of Ballot

Proposed Amendment to Add Article IX–A

(Prohibition of taxation of personal property by valuation as to individuals.)

Explanation of Amendment

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX–A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

Place an X in blank opposite "Yes" or "No" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

Capitol Building
Springfield, Illinois
Office of the Secretary of State

I, Paul Powell, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the proposed amendment, the explanation of the proposed amendment, the arguments in favor of the proposed amendment, the arguments against proposed amendment and the form in which said amendment will appear upon a separate blue ballot pursuant to Senate Joint Resolution No. 30 of the Seventy-sixth General Assembly, the original of which is on file in this office.

In Witness Whereof, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done at my office in the Capitol Building in the city of Springfield this 27th day of February A.D. 1970, and of the Independence of the United States the one hundred and ninety-fourth.

/s/ PAUL POWELL
(SEAL) *Secretary of State*

Journal of the Illinois Senate No. 131, May 19, 1970, at page 4405, showing adoption of Senate Joint Resolution No. 67, reading as follows:

PRESENTATION OF RESOLUTIONS

Senators Harris, Arrington, Coulson, Carpentier, Laughlin, Sours, Baltz, Davidson, Larson, Horsley, Latherow, Collins, Mitchell, Gilbert, Ottwein, McBroom, Rosander, Mitchler and Berning offered the following Senate Joint Resolution:

SENATE JOINT RESOLUTION No. 67

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was

the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase "as to individuals", this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common.

Senator Harris having asked and obtained unanimous consent to suspend the rules for the immediate consideration of the resolution, moved its adoption.

The motion prevailed and the resolution was adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Journal of the Illinois House of Representatives, No. 115, May 29, 1970 at page 7145, showing House concurrence with the Senate in the adoption of Senate Joint Resolution No. 67:

The Speaker took from his table and laid before the House, Senate Joint Resolution No. 67, reported out of the Executive Committee on May 26th with the recommendation that it be concurred in.

Mr. Nowlan moved that the House concur with the Senate in the adoption of the resolution.

On that motion, a vote was taken resulting as follows: Yeas, 84; nays, 20.

Those voting in the affirmative are:

Anderson, M. K.	Geisler	Lauterbach
Anderson, R. E.	Giorgi	Lindberg
Barry, Tobins	Granata	Madigan
Berman	Hall, Barber	Markert
Blades	Harpstrite	McCormick
Blair	Henss	McDevitt
Bluthardt	Hill	McGah
Borchers	Hoffman, G. L.	Miller, K. W.
Burditt	Hoffman, R. K.	Miller, F. J.
Campbell	Homeier	Moore
Capuzi	Houde	Morgan
Choate	Hyde	Neff
Collins, P. W.	Janczak	North
Conolly, John	Johnson	Nowlan
Copeland	Johnston	Palmer
Cox	Jones, J. D.	Pappas
Cunningham, L.	Jones, L. N.	Peterson
Dawson	Kahoun	Philip
Day	Karmazyn	Randolph
Epton	Kipley	Redmond
Friedland	Kleine, J. H.	Regner

Rose	Thompson, J. W.	Washington, G.
Sandquist	Tuerk	Weaver
Schlickman	Wall	Williams
Shapiro	Walsh, R. A.	Wolbank
Simmons	Walsh, Wm. D.	Wolf, J. J.
Stolle	Warman	Wright
Telczer	Washburn	Mr. Speaker

Yeas—84.

Those voting in the negative are:

Arrigo	Course	Kirie
Barry, Don	Downes	Krause
Bradley	Elward	Lenard
Brandt	Ewell	Shaw
Brinkmeier	Fary	Smith, F. J.
Caldwell	Houlihan	Yourell
Collins, O. G.	Keller	

Nays—20.

The motion prevailed.

And the House concurred with the Senate in the adoption of Senate Joint Resolution No. 67.

Ordered that the Clerk inform the Senate thereof.

RULINGS AND OPINIONS:

Opinion of the Attorney General of the State of Illinois, Dated January 22, 1971:

January 22, 1971

File No. S-260

Taxation:

Personal Property

Tax Exemption

Honorable Robert J. Lehnhausen
Director, Department of Local
Government Affairs
325 West Adams Street
Springfield, Illinois 62704

Dear Sir:

I have your recent letter wherein you state:

"The Department of Local Government Affairs is vested with certain statutory powers and duties relating to the assessment of property for property tax purposes, among which are the following:

* * * * *

"Pursuant to such statutory provisions, inquiries have been made by local assessment officers concerning the effect of the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibiting, as to individuals, the taxation of personal property by valuation.

"We would appreciate receiving your opinion as to the following:

* * * * *

"6. Is the personal property held by an individual trustee exempt from taxation if the beneficiaries or beneficial owners are individuals? Is the answer different if the property is held by a corporate trustee?

* * * * *

Furthermore, at page 100 of Volume 34 of Illinois Law and Practice is found the following statement:

> "In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable, sensible, practical, and commonsense construction even though such construction qualifies the universality of its language."

As indicated above, the personal property tax is a tax upon the personal property itself. The only logical conclusion then as to the meaning of the constitutional amendment (Article IX-A) is that if the effect of the tax would be directly upon an individual (as distinguished, for example, from a corporation) then such personal property tax is abolished.

Article IX-A of the Illinois Constitution of 1870 became effective January 1, 1971 and is as follows:

> "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Turning now to the questions which you have asked I shall discuss them in order.

* * * * *

In your sixth question you inquired whether personal property held by an individual trustee is exempt from taxation if the beneficiaries or beneficial owners are individuals. Since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt. The fact that the trustee is a corporation or an individual would make no difference."

* * * * *

Very truly yours,
ATTORNEY GENERAL.

Opinion of the Attorney General of the State of Illinois
Dated March 2, 1973:

WILLIAM J. SCOTT
Attorney General
State of Illinois
Springfield
March 2, 1973

To: All County Treasurers

Re: Exemption of individuals from payment of ad valorem personal property tax

Dear Sir:

On Thursday, February 22, 1973, the Supreme Court of the United States, acting on my petition, reversed the decision of the Supreme Court of Illinois and held that Article IX-A of the Illinois Constitution of 1870 abolishing the ad valorem tax on personal property owned by individuals is valid. *Lehnhausen* v. *Lake Shore Auto Parts Co., Inc.*, ... U. S. ..... (1973) (Case No. 71-685). With this decision, we are finally able to relieve the individual taxpayer of this State of the burden of the personal property tax.

Since you, as the Treasurer of your county have the task of implementing Article IX-A, I felt that the following information would be of assistance to you, both in determining future personal property tax liability and in making refunds of personal property taxes collected from individuals during the pendency of the litigation concerning Article IX-A.

Article IX-A provides in relevant part that ". . . the taxation of personal property by valuation is prohibited as to individuals". The effect of this provision is to abolish the ad valorem tax on personal property owned by individuals, while continuing the tax on personalty owned by corporations.

* * * * *

As I pointed out in my Letter of Opinion to Director Robert J. Lehnhausen of the Department of Local Government Affairs, Article IX-A abolishes the tax on personal property in those situations in which the tax directly affects property owned by an individual. Thus, not only the property of sole proprietors and of individual farmers is exempt from the tax, but also the personal property of a partnership, of a decedent's estate in which the heirs or legatees are individuals, and of a trust in which the beneficiaries or beneficial owners are individuals, since in each of these instances, the tax would fall on property owned by "a natural person or by two or more natural persons as joint tenants or tenants in common". Attorney General's Opinion No. S-260 (January 22, 1971).

Due to the litigation concerning the validity of Article IX-A, these individuals have been required to pay the tax on personalty for 1971 (payable in 1972), despite the fact that Article IX-A became effective on January 1, 1971. Since Article IX-A does create a valid exemption, all individuals who have paid the tax accruing during 1971 (payable in 1972) are entitled to a refund of the full amount of tax paid together with interest, deducting only the reasonable cost of administering the refund procedure. This would include individuals who did not pay the tax under protest as well as those who did. The existence of a valid exemption would obviate the need for a formal protest to protect an individual's right to a refund of personal property taxes accruing and paid after the exemption has become effective.

I hope that this information will facilitate the implementation of Article IX-A in your county.

Very truly yours,

/s/ WILLIAM J. SCOTT
William J. Scott
Attorney General
State of Illinois

Opinion of the State's Attorney of Cook County, Illinois
Dated December 28, 1970:

December 28, 1970

S. A. Legal Opinion No. 1340

President George W. Dunne
537 County Building
Chicago, Illinois 60602

Dear President Dunne:

A question has arisen as to whether the recently adopted amendment to the 1870 Constitution of the State of Illinois applies to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

On November 3, 1970, the voters of Illinois approved the following amendment to the revenue article of the 1870 Constitution of the State of Illinois:

> "ARTICLE IX-A
>
> "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*."

The schedule for implementation of this amendment provides:

> "This amendment shall be effective January 1, 1971."

Resolution of the question depends upon the intention of the General Assembly as to the word "individual" when it submitted this proposed amendment to the electorate. Chapter 7½, Paragraph 2 of the Illinois Revised Statutes of 1969 provides:

> "The General Assembly in submitting an amendment to the Constitution to the electorate shall prepare a brief explanation of such amendment, a brief argument in favor of the same. . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment."

Pursuant to this statutory direction, the Seventy-Sixth General Assembly prepared such arguments. In the arguments in favor

of the proposed amendment, there is no indication that the proposed amendment would not apply to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

However, the arguments against the proposed amendment (which were corrected, with specific reference to this matter) contain the following language:

> "That [personal property] which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."

Thus, the clear import of this legislative explanation of the proposed amendment is that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax.

Therefore, it is my opinion that the recently adopted constitutional amendment prohibits taxation by valuation of personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships. (The provision of the Constitution, approved December 15, 1970, which prohibits reinstatement of any abolished ad valorem personal property tax, has no effect upon this opinion.)

Very truly yours

EDWARD V. HANRAHAN
State's Attorney of Cook County

cc: P. J. Cullerton
Cook County Assessor

AFFIDAVITS OF MEMBERS OF THE ILLINOIS GENERAL ASSEMBLY.

Affidavit of former State Representative Bernard McDevitt, a member of the Seventy Sixth General Assembly of Illinois, who submitted the Corrected "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" which was attached to Petitioner's Second Amended Complaint as Exhibit 13, reading as follows:

AFFIDAVIT

Bernard McDevitt, being first duly sworn on oath, deposes and states as follows:

Affiant, a duly elected member of the 76th General Assembly of Illinois, was Chairman of the House Judiciary Committee and a member of the Special Committee appointed pursuant to SJR 43 of the 76th General Assembly to prepare, together with other members of the House and Senate serving on said Committee, a brief explanation, in argumentation form, of the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 which would prohibit the taxation of personal property by valuation as to individuals. The original report prepared by the Special Committee contained a statement in the Arguments Against that the proposed amendment was discriminatory because it exempted from taxes personal property owned by natural persons but taxed personal property "*. . . which is owned by corporations, trusts, etc., . . .*"

Affiant further states it was never the intent of the General Assembly under the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 to tax decedents estates, guardianships, conservatorships or the traditional form of trust under which the trustee manages and conserves the trust assets for the exclusive benefit of natural persons and not for the conducting of a business for profit.

Affiant further states that under the provisions of "*An Act to provide the manner of proposing amendments to the Constitution and submitting the same to the electors of this*

state", approved March 14, 1877, the General Assembly could not and would not allow a mis-statement of exemption or claim of exemption to be set forth in either the Explanation, Arguments in Favor of or Arguments Against the proposed Constitutional Amendment to add Article IX-A to the 1870 Constitution of Illinois.

Affiant further states that in order to express the intent of the General Assembly that personal property held in a fiduciary capacity for the benefit of natural persons was to be exempt from taxation, the joint committee prepared a corrected report. The corrected report was reexecuted by the members of the Special Committee on constitutional amendments appointed pursuant to SJR 43 and the corrected report was adopted by both the House of Representatives and Senate of the 76th General Assembly. Said corrected report in the Arguments Against expressly stated as a fact *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. * * *"*

Affiant further states as is shown by the May 15, 1969 Senate Journal proceedings that SJR 30, as amended was approved by the Senate of the 76th General Assembly by a vote of 46 yeas, 3 nays and was thereafter approved, as is shown by the June 30, 1969 House Journal proceedings in the House of the 76th General Assembly by a vote of 171 yeas and 0 nays.

Affiant further states that of the 13 signers of the special report, 11 members voted "yea" on the adoption of SJR 30, as amended, one Senator was present and did not vote; and Sen. Terrel E. Clarke was the only member of the Committee voting "nay".

Affiant further states that the Arguments Against were not arguments by the minority of the General Assembly but were arguments prepared by members of the General Assembly who voted favorably for SJR 30, so that the electorate might by fully informed of the issue on which they were voting. The factual statements of exemption

contained in the pamphlet distributed to every elector in the state were true.

Further Affiant sayeth not.

/s/ BERNARD MCDEVITT
Bernard McDevitt

Subscribed and sworn to before me this 28th day of Sepember, 1976.

/s/ MARY M. OZANICH
(SEAL) *Notary Public*

Affidavit of Senator Terrel E. Clarke, attached to Petitioner's Second Amended Complaint as Exhibit C, reading as follows:

AFFIDAVIT

Terrel E. Clarke being first duly sworn on oath deposes and states as follows:

Affiant was a duly elected member of the 76th General Assembly of Illinois and was a member of the Special Committee appointed pursuant to SJR 43 of the 76th General Assembly to prepare, together with other members of the House and Senate serving on said committee, a brief explanation, in argumentation form, of the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 which would prohibit the taxation of personal property by valuation as to individuals.

Affiant further states that Affiant was the only member of said Special Committee who had voted "nay" in either the Senate or House of the 76th General Assembly on the adoption of SJR 30 as amended.

Affiant further states that he voted "nay" on the adoption of said constitutional proposition by reason of the fact that he was a member and co-chairman of the Constitutional Study Commission appointed by the General Assembly, and was the chief sponsor of the bill developed by that commission to set up procedural guidelines for the operation of the constitutional convention voted by the people. It was the opinion of Affiant that it was not appro-

priate for the Legislature to be proposing constitutional amendments when a constitutional convention was due to convene. It was Affiant's belief that all constitutional propositions should be developed through the constitutional convention process.

Affiant, as a member of the Special Committee, appointed pursuant to SJR 43 of the 76th General Assembly, signed the corrected report which revised the statement reading *"That personal property which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc. is subject to taxes."* to read *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."*

Affiant further states that said factual correction was made to clearly inform the electorate that personal property taxes were being abolished on property owned by a natural person or held in a fiduciary capacity for the benefit of a natural person.

/s/ TERREL E. CLARKE
Terrel E. Clarke

Subscribed and sworn to before me this 27th day of September, 1976.

/s/ NETTIE V. TUREN
(SEAL) *Notary Public*

Affidavit of former Senator W. Russell Arrington, chief sponsor and President Pro Tem and Majority Leader of the Illinois Senate, proposing Senate Joint Resolution No. 30, attached to Petitioner's Second Amended Complaint as Exhibit D, reading as follows:

AFFIDAVIT

W. Russell Arrington, having first been duly sworn, on oath deposes and says that during the 68th Illinois General Assembly, he served as a member of the Illinois Senate and as President Pro Tempore and Majority Leader; that he was the principal sponsor of Senate Joint Resolution 30 which, upon approval by the voters in the November 1970 general election, became Article 9a of the Constitution of the State of Illinois; that he is familiar with the provisions of said article; that by use of the phrase "as to individuals", he intended, as sponsor, that all natural persons should be relieved of the burden of the tax on personal property, even if their property were held in trust and whether or not such persons happened to be the beneficiaries of trusts; that he represented in speeches on the floor of the Senate that the intention of Senate Joint Resolution 30 was to relieve natural persons of the burden of personal property tax; that he, in sponsoring the measure and in voting for it, so intended; and that it is his belief that the members of the Senate who voted unanimously, save one, in favor of Senate Joint Resolution 30, must have intended to relieve natural persons of the burden of the tax on personal property whether or not they happen to be trust beneficiaries.

/s/ W. RUSSELL ARRINGTON
W. Russell Arrington

Subscribed and sworn to before me this 21st day of September, 1976

/s/ MARION E. MEYERS
(SEAL) *Notary Public*

Affidavit of former Senator Thomas A. McGloon, Minority Leader of the Illinois Senate proposing Senate Joint Resolution No. 30, attached to Petitioner's Second Amended Complaint as Exhibit E, reading as follows:

AFFIDAVIT

Thomas A. McGloon, having first been duly sworn, on oath deposes and states that he was Minority Leader of the Illinois Senate in the 68th General Assembly (calendar years 1969-1970) of the Illinois General Assembly and that he proposed the amendment to Senate Joint Resolution 30 limiting the abolition of the personal property tax to read "as to individuals"; that his intention as the sponsor of said amendment was to restrict the abolition of personal property tax so that natural persons would be relieved of the burden of the tax on personal property, however held; that the end result would thus be the abolition of the burden of such tax on all living, breathing, natural persons; that he represented in speeches on the Senate floor to the members of the Senate that such was his understanding of the effect of his amendment to the Senate Joint Resolution 30; and that the other members of the Senate who unanimously voted in favor of such amendment with the exception of one Senator who voted no, clearly should have understood that the amendment would have the effect, should it become law, of removing from natural breathing, living persons the burden of personal property tax.

/s/ THOMAS A. MCGLOON
Thomas A. McGloon

Subscribed and sworn to before me this 17th day of September, 1976.

/s/ WILLIAM LEE MARSH
(SEAL) *Notary Public*

Affidavit of former Senator William C. Harris, a co-sponsor of Senate Joint Resolution No. 67, attached to Petitioner's Second Amended Complaint as Exhibit L, reading as follows:

AFFIDAVIT

William C. Harris being first duly sworn on oath deposes and states as follows:

I was a duly elected member of the Senate of the 76th General Assembly of Illinois.

I was a co-sponsor of SJR 30 which proposed to add Article IX-A to the Illinois Constitution of 1870 to prohibit the taxation of personal property by valuation as to individuals.

I voted favorably on May 7, 1970 on the adoption of the corrected report submitted by the Special Committee on Submission of The Proposed Constitutional Amendment pursuant to *SJR 43*, which corrected report stated in part as follows: *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc. is subject to taxes."*

I was a co-sponsor of *SJR 67* which was adopted by the Senate on May 19, 1970, and which stated in part: ". . . *that, by the use of the phrase 'as to individuals', this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."*

SJR 67 was never intended to be exclusive of or to supplant the report of the Special Committee prepared pursuant to SJR 43 which previously had been unanimously adopted and approved by the Senate.

It was the intent of the 76th General Assembly in proposing *SJR 67* to insure that natural persons were relieved of the burden of personal property taxation, regardless of the manner in which their property was held, whether held outright, or by a fiduciary for their benefit, or in joint tenancy, or in tenancy in common. The fact is that, as a member of the General Assembly, I intended to ex-

clude individuals from personal property taxation from any category that individuals might be deemed by a court; and to include corporations in personal property taxation in all categories of personal property taxation. Let me restate the matter as succinctly and simply as possible. We wanted to except individuals from all categories of personal property taxation and include corporations in every way possible.

Further Affiant sayeth not.

/s/ WILLIAM C. HARRIS
William C. Harris

Subscribed and sworn to before me this 29th day of September, 1976.

/s/ MARGARET K. GRANEY
(SEAL) *Notary Public*

Stipulation, filed September 24, 1976, entered into by and between the parties by their respective counsel, which Stipulation, exclusive of caption and signatures, reads, in part, as follows:

"STIPULATION."

"It is hereby stipulated and agreed to by and between the respective parties hereto by their respective counsel:

(1) Plaintiffs are only claiming exemption of traditional forms of trusts, i.e., a trust created by will, deed, agreement, declaration or other written instrument, the object of which is to hold, conserve and manage trust assets, with incidental powers, for the benefit of natural persons, and not for the conducting of a business.

(2) Of the 102 counties in the State of Illinois, only the counties of Winnebago, Boone, Lake, Kane, DuPage, Sangamon and Cook have ever (prior to 1975) assessed or collected ad valorem taxes on personal property (other than bank stock) held in trust for the benefit of natural persons; and even in those Counties, the assessment practices have not been uniformly applied."

Order entered on December 3, 1976 by the trial Judge, F. Emmett Morrissey, reading as follows:

ORDER

This Matter coming on to be heard on the State's Attorney's motion to dismiss the second amended complaint herein, and the Court having considered the briefs, exhibits, and documents received in evidence, and having heard oral argument on behalf of counsel for the parties, and being fully advised in the premises;

IT IS HEREBY ADJUDGED, AND DECREED that the defendants' motion to strike and dismiss Count I of plaintiff's second amended complaint be, and the same hereby is, dismissed insofar as the trust created by R. B. Robinson for the benefit of her minor granddaughter, which said trust is declared to be exempt from personal property taxation under the opinion of the Illinois Supreme Court in *Hanley* v. *Kusper*, 61 Ill. 2d 452; and the said R. B. Robinson is hereby ordered, adjudged, and decreed to be the appropriate class representative for all others similarly situated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all trusts created for the exclusive benefit of a minor be, and they hereby are, held to be exempt from personal property taxation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants' motion to dismiss Count II be, and the same hereby is, sustained on the following grounds:

(a) Public Act 78-1250 [Ill. Rev. Stat. 1975, ch. 120, § 500.21(b)] is unconstitutional, illegal, null, and void for failure of the General Assembly to concurrently enact a replacement tax as required by § 5(c) of Article IX of the 1970 Illinois Constitution;

(b) The memorandum of the Director of the Department of Local Government Affairs, issued under date of October 14, 1974, was null and void, and not binding on the defendants herein; and

(c) The decision of the Illinois Supreme Court in *Hanley* v. *Kusper*, 61 Ill. 2d 452, is *res judicata*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the alleged cause of action set forth in Count II of plaintiff's second amended complaint be, and the same hereby is, dismissed.